

**Introduced by Senator Negrete McLeod**

February 18, 2009

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An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 192, as introduced, Negrete McLeod. Alcoholic beverages: returns.

Under the Alcoholic Beverage Control Act, a seller may accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. An exception to that provision permits a seller to accept the return of beer from a seasonal or temporary licensee, as specified.

This bill would expand that exception to provide that an alcoholic beverage licensee may accept the return of unsold and unopened beer from organizations that obtain a particular license, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 23104.2 of the Business and Professions
- 2 Code is amended to read:
- 3 23104.2. (a) Subject to the exceptions specified in subdivision
- 4 (b), a retail licensee may return beer to the wholesaler or
- 5 manufacturer from whom the retail licensee purchased the beer,
- 6 or any successor thereto, and the wholesaler, manufacturer, or
- 7 successor thereto may accept that return if the beer is returned in
- 8 exchange for the identical quantity and brand of beer. No

1 wholesaler or manufacturer, or any successor thereto, shall accept  
2 the return of any beer from a retail licensee except when the beer  
3 delivered was not the brand or size container ordered by the retail  
4 licensee or the amount delivered was other than the amount  
5 ordered, in which case the order may be corrected by the wholesaler  
6 or manufacturer who sold the beer, or any successor thereto. If a  
7 package had been broken or otherwise damaged prior to or at the  
8 time of actual delivery, a credit memorandum may be issued for  
9 the returned package by the wholesaler or manufacturer who sold  
10 the beer, or any successor thereto, in lieu of exchange for an  
11 identical package when the return and corrections are completed  
12 within 15 days from the date the beer was delivered to the retail  
13 licensee.

14 (b) Notwithstanding subdivision (a), a wholesaler or  
15 manufacturer, or any successor thereto, may accept the return of  
16 beer purchased from that wholesaler, manufacturer, or successor  
17 thereto, as follows:

18 (1) (A) From a seasonal or temporary licensee if at the  
19 termination of the period of the license the seasonal or temporary  
20 licensee has beer remaining unsold, or from an annual licensee  
21 operating on a temporary basis if at the termination of the  
22 temporary period the annual licensee has beer remaining unsold.

23 (B) For purposes of subparagraph (A), an annual licensee shall  
24 be considered to be operating on a temporary basis if he or she  
25 operates at seasonal resorts, including summer and winter resorts,  
26 or at sporting or entertainment facilities, including racetracks,  
27 arenas, concert halls, and convention centers. Temporary status  
28 shall be deemed terminated when operations cease for 15 days or  
29 more. No wholesaler or manufacturer, or successor thereto, shall  
30 accept the return of beer from an annual licensee considered to be  
31 operating on a temporary basis unless the licensee notifies that  
32 wholesaler or manufacturer, or successor thereto, within 15 days  
33 of the date the licensee's operations ceased.

34 (2) (A) Subject to subparagraph (B), a wholesaler or  
35 manufacturer, or any successor thereto, may, with department  
36 approval, accept the return of a brand of beer discontinued in a  
37 California market area or a seasonal brand of beer from a retail  
38 licensee, provided that the beer is exchanged for a quantity of beer  
39 of a brand produced or sold by the same manufacturer with a value  
40 no greater than the original sales price to the retail licensee of the

1 returned beer. For purposes of this subparagraph, “seasonal brand  
2 of beer” means a brand of beer, as defined in Section 23006, that  
3 is brewed by a manufacturer to commemorate a specific holiday  
4 season and is so identified by appropriate product packaging and  
5 labeling.

6 (B) A discontinued brand of beer ~~may~~ *shall* not be reintroduced  
7 for a period of 12 months in the same California market area in  
8 which a return and exchange of that beer as described in  
9 subparagraph (A) has taken place. A seasonal brand of beer ~~may~~  
10 *shall* not be reintroduced for a period of six months in the same  
11 California market area in which a return and exchange of that beer  
12 as described in subparagraph (A) has taken place.

13 (c) Notwithstanding subdivision (a), a wholesaler or  
14 manufacturer, or any successor thereto, may accept the return of  
15 beer purchased from that wholesaler or manufacturer, or any  
16 successor thereto, by the holder of a retail license following the  
17 revocation of, suspension of, voluntary surrender of, or failure to  
18 renew the retail license.

19 (d) A wholesaler or manufacturer, or any successor thereto, may  
20 credit the account of the retailer identified in subdivision (c) in an  
21 amount not to exceed the original sales price to the retailer of the  
22 returned beer, provided that the beer has been paid for in full.

23 (e) Notwithstanding the 15-day time limit for the return of beer  
24 described in subdivision (a), beer that is recalled for health or  
25 safety issues may be accepted for return at anytime from a retailer  
26 and be picked up by the seller of beer. The seller of beer may  
27 exchange the returned beer for identical product, if safe inventory  
28 is available, issue a deferred exchange memorandum showing the  
29 beer was picked up and is to be replaced when inventory is  
30 available, or issue a credit memorandum to the retailer for the  
31 returned beer.

32 (f) *Notwithstanding subdivision (a), a licensee may accept the*  
33 *return of unsold and unopened beer from an organization that*  
34 *obtained a temporary license pursuant to Section 24045 or*  
35 *24045.1. The licensee may credit the account of the organization*  
36 *in an amount not to exceed the original sales price of the returned*  
37 *beer, provided that the beer has been paid for in full.*